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United States of America

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,  
  
Plaintiff,  
  
v.  
  
GENO JEOVANI MACIEL,  
  
Defendant.

CASE NO. 1:21-MJ-00111-SAB

STIPULATION REGARDING EXCLUDABLE  
TIME PERIODS UNDER SPEEDY TRIAL ACT;  
FINDINGS AND ORDER

DATE: February 11, 2022

TIME: 2:00 p.m.

COURT: Hon. Barbara A. McAuliffe

This case is set for a preliminary hearing on February 11, 2022. The parties agree and stipulate to continue the preliminary hearing until March 25, 2022. Defense counsel was recently (December 28, 2021) appointed to replace prior counsel. The parties were engaged in plea discussions and further investigation, and need additional time to conclude that process. Additionally, counsel for the government's mother passed away on January 28, 2022 after a brief illness during which undersigned counsel helped take care of her and undersigned counsel's elderly father. This delayed progress on plea negotiations.

On April 17, 2020, this Court issued General Order 617, which suspends all jury trials in the Eastern District of California scheduled to commence before June 15, 2020, and allows district judges to continue all criminal matters to a date after June 1. On May 13, 2020, this Court issued General Order 618, which suspends all jury trials in the Eastern District of California until further notice, and allows district judges to continue all criminal matters. This and previous General Orders were entered to

1 address public health concerns related to COVID-19. On December 21, 2021, this Court issued General  
 2 Order 640, extending authorization of video-conferencing and telephone conferencing for criminal  
 3 proceedings in light of the ongoing coronavirus public emergency, pursuant to the CARES Act.

4 Pursuant to Fed. R. Crim. P. 5.1(c) and (d), a preliminary hearing must be held “no later than 14  
 5 days after initial appearance if the defendant is in custody,” unless the defendant consents and there is a  
 6 “showing of good cause”, or if the defendant does not consent and there is a “showing that extraordinary  
 7 circumstances exist and justice requires the delay.” Here, the defendant consents and there is good  
 8 cause.

9 Although the General Orders address the district-wide health concern, the Supreme Court has  
 10 emphasized that the Speedy Trial Act’s end-of-justice provision “counteract[s] substantive  
 11 openendedness with procedural strictness,” “demand[ing] on-the-record findings” in a particular case.  
 12 *Zedner v. United States*, 547 U.S. 489, 509 (2006). “[W]ithout on-the-record findings, there can be no  
 13 exclusion under” § 3161(h)(7)(A). *Id.* at 507. Moreover, any such failure cannot be harmless. *Id.* at  
 14 509; *see also United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153 (9th Cir. 2000) (explaining that a  
 15 judge ordering an ends-of-justice continuance must set forth explicit findings on the record “either orally  
 16 or in writing”).

17 Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both mandatory  
 18 and inexcusable—General Orders 611, 612, and 617 require specific supplementation. Ends-of-justice  
 19 continuances are excludable only if “the judge granted such continuance on the basis of his findings that  
 20 the ends of justice served by taking such action outweigh the best interest of the public and the  
 21 defendant in a speedy trial.” 18 U.S.C. § 3161(h)(7)(A). Moreover, no such period is excludable unless  
 22 “the court sets forth, in the record of the case, either orally or in writing, its reason or finding that the  
 23 ends of justice served by the granting of such continuance outweigh the best interests of the public and  
 24 the defendant in a speedy trial.” *Id.*

25 The General Orders exclude delay in the “ends of justice.” 18 U.S.C. § 3161(h)(7) (Local Code  
 26 T4). Although the Speedy Trial Act does not directly address continuances stemming from pandemics,  
 27 natural disasters, or other emergencies, this Court has discretion to order a continuance in such  
 28 circumstances. For example, the Ninth Circuit affirmed a two-week ends-of-justice continuance

following Mt. St. Helens' eruption. *Furlow v. United States*, 644 F.2d 764 (9th Cir. 1981). The court recognized that the eruption made it impossible for the trial to proceed. *Id.* at 767-68; *see also United States v. Correa*, 182 F. Supp. 326, 329 (S.D.N.Y. 2001) (citing *Furlow* to exclude time following the September 11, 2001 terrorist attacks and the resultant public emergency). The coronavirus is posing a similar, albeit more enduring, barrier to the prompt proceedings mandated by the statutory rules.

In light of the societal context created by the foregoing, this Court should consider the following case-specific facts in finding excludable delay appropriate in this particular case under the ends-of-justice exception, § 3161(h)(7) (Local Code T4). If continued, this Court should designate a new date for the preliminary hearing. *United States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010) (noting any pretrial continuance must be "specifically limited in time").

### STIPULATION

Plaintiff United States of America, by and through its counsel of record, and defendant, by and through defendant's counsel of record, hereby stipulate as follows:

1. By previous order, this matter was set for preliminary hearing on February 11, 2022.
2. By this stipulation, defendant now moves to continue the preliminary hearing until **March 25, 2022, at 2:00 p.m.** and to exclude time between February 11, 2022, and March 25, 2022, under Local Code T4.
3. The parties agree and stipulate, and request that the Court find the following:
  - a) The parties are discussing and conducting further investigation into pre-indictment matters, and need additional time to conclude.
  - b) Counsel for defendant desires additional time to consult with his client, conduct further investigation, and discuss charges with the government.
  - c) Counsel for the government's mother passed away on January 28, 2022 after a brief illness during which time undersigned counsel helped care for her and undersigned counsel's elderly father, delaying progress on plea negotiations.
  - d) Counsel for defendant believes that failure to grant the above-requested continuance would deny him the reasonable time necessary for effective preparation, taking into account the exercise of due diligence.

e) The government does not object to the continuance.

f) Pursuant to Fed. R. Crim. P. 5.1(c) and (d), a preliminary hearing must be held “no later than 14 days after initial appearance if the defendant is in custody,” unless the defendant consents and there is a “showing of good cause”. Here, the defendant consents and there is good cause as set forth herein.

g) Based on the above-stated findings, the ends of justice served by continuing the case as requested outweigh the interest of the public and the defendant in an indictment or trial within the original dates prescribed by the Speedy Trial Act.

h) For the purpose of computing time under the Speedy Trial Act, 18 U.S.C. § 3161, et seq., within which an indictment must be filed and within which a trial must commence, the time period of February 11, 2022 to March 25, 2022, inclusive, is deemed excludable pursuant to 18 U.S.C. § 3161(h)(7)(A), B(iv) [Local Code T4] because it results from a continuance granted by the Court at defendant’s request on the basis of the Court’s finding that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy indictment/trial.

4. Nothing in this stipulation and order shall preclude a finding that other provisions of the Speedy Trial Act dictate that additional time periods are excludable from the period within which an indictment must be filed and a trial must commence.

IT IS SO STIPULATED.

Dated: February 7, 2022

PHILLIP A. TALBERT  
United States Attorney

/s/ KIMBERLY A. SANCHEZ  
KIMBERLY A. SANCHEZ  
Assistant United States Attorney

Dated: February 7, 2022

/s/ PETER JONES  
PETER JONES  
Counsel for Defendant  
GENO JEOVANI MACIEL

**ORDER**

IT IS SO ORDERED that the preliminary hearing is continued from February 11, 2022, to **March 25, 2022, at 2:00 p.m. before Magistrate Judge Stanley A. Boone.** Time is excluded for the reasons stated in the parties' stipulation.

IT IS SO ORDERED.

Dated: **February 7, 2022**

**/s/ Barbara A. McAuliffe**  
UNITED STATES MAGISTRATE JUDGE